

WILLIAM A. KLUG

IBLA 79-227

Decided October 10, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 56580.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease, terminated automatically by operation of law for failure to pay rental timely, may be reinstated if, among other matters, the failure to pay timely was justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When rental payment for an oil and gas lease is mailed after the date it is due, generally there can be no basis for reinstating the lease because of reasonable diligence.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals -- Rules of Practice: Appeals: Burden of Proof

The burden of showing that late payment of annual rental for an oil and gas lease is justifiable is on the lessee. An assertion of personal reasons without

further explanation, is insufficient to meet this burden. Nor does reliance on receipt of a courtesy notice justify failure to pay rental timely.

APPEARANCES: William A. Klug, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

William A. Klug appeals from the January 16, 1979, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease W 56580. Appellant's lease terminated by operation of law for failure to pay the annual rental on or before January 1, 1979.

Appellant's rental check, in the amount of \$409.50, was dated January 5, 1979, and received in the State Office on January 9, 1979. Since an explanation for the late payment accompanied the check, BLM treated the letter as a petition for reinstatement. The letter stated appellant did not receive a notice that rental was due. The BLM decision held that the Department has ruled that "reliance on receipt of a courtesy notice cannot be deemed justification for late payment. The Department has no obligation to send a courtesy notice." The decision quoted 43 CFR 3108.2-1(c)(2) which states in part:

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment.

In a letter received January 29, 1979, appellant stated, "I realize I was at fault for not having the rental payment in your office on time. I make no excuses but would like to retain this lease." He asked that the State Office reconsider its decision. On February 9, 1979, BLM informed appellant that the decision of January 16, 1979, was final, but that appellant could appeal to the Board of Land Appeals on or before February 19, 1979. Appellant's notice of appeal, postmarked February 15, 1979, was received February 20, 1979, and under 43 CFR 4.411 and 4.401(a) is accepted as timely.

On appeal, appellant states that he was unaware that he was responsible for payment in the absence of a notice. He then states he was away from home due to a "personal tragedy" from mid-November until January 3, 1979, and was without his "personal business effects."

In reference to his communications with the State Office he stated that he did not think it was necessary to explain in detail why payment was late. He requests that, under the circumstances, he not be held fully responsible.

On August 28, 1979, we allowed appellant 30 days to submit further information and reasons with some detail to support his request for reinstatement. Appellant responded with a brief letter reiterating what he said in his statement of reasons and providing no more specific justification for the delay in paying the rental. He states that the circumstances causing him to be away from home were beyond his control and asks the Board to make an exception as he was not late intentionally.

[1, 2] When rental for an oil and gas lease is not paid on or before the anniversary date, the lease automatically terminates by operation of law, except under limited circumstances not applicable here. 30 U.S.C. § 188(b) (1970). Congress allows reinstatement of a terminated lease if, among other things, the failure to pay the rental timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1970). Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of payment. 43 CFR 3108.2-2(c)(2). In order for the failure to pay rental timely to be justifiable, the failure must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Emma Pace, 35 IBLA 143 (1978); Richard C. Corbyn, 32 IBLA 296 (1977); Adolph F. Muratori, 31 IBLA 39 (1977).

Payment was due at the BLM State Office on January 1, 1979. Appellant's check was not mailed until at least January 5, 1979. When the rental payment is not mailed before it is due, generally there can be no basis for reinstating an oil and gas lease because of reasonable diligence. Albert R. Fairfield, 34 IBLA 133 (1978); Dolores M. Heggie, 28 IBLA 272 (1976).

[3] Appellant has failed to establish that his failure to pay the rental timely was justifiable. The BLM decision clearly informed appellant that the burden of showing that late payment was justifiable is on the lessee, yet in neither letter from appellant does he satisfactorily explain his tardiness. The most he alleges is a "personal tragedy" which caused him to be away from home for reasons beyond his control. This assertion, without more showing it was beyond his control to make the payment, is insufficient to excuse late payment. The lack of a courtesy notice from BLM does not justify late payment. The courtesy notice is merely a reminder that rental is due. Reliance on receipt of the notice does not justify a failure to pay the rental timely. Emma Pace, *supra*; Richard C. Corbyn, *supra*; Helena Silver Mines, Inc., 30 IBLA 262 (1977). We must conclude that the BLM State

Office properly denied appellant's petition for reinstatement and that his oil and gas lease terminated automatically by operation of law on January 1, 1979.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

